

Remarks

Upon entry of the present amendment, claims 22-28, 30-36, and 42-44 will be pending. Claims 29, 37, and 41 were canceled without prejudice or disclaimer. Applicants respectfully reserve the right to pursue the canceled subject matter in later filed continuing applications.

Claims 32 and 42 have been amended to delete recitation to a humanized antibody.

As Applicants noted in response to the Restriction Requirement, claim 37 is a dependent claim directed to methods of detecting a protein using the claimed antibodies. Thus, claim 37 should be rejoined upon the allowance of claim 22 in light of M.P.E.P. § 821.04.

No new matter has been added.

I. Priority

The Examiner has rejected Applicants' claim for domestic priority under 35 U.S.C. § 119(e) to U.S. Provisional Application No. 60/049,942 (the "'942 application'"), filed June 17, 1997, for the pending claims. In particular, the Examiner alleges Applicants' are not entitled to the benefit of the filing date of the '942 application because SEQ ID NO:2 is allegedly not disclosed in the provisional application. *See*, Official Action, page 5, under "Priority" section.

Applicants respectfully disagree. Applicants kindly draw the Examiner's attention to the '942 application that is electronically accessible through the continuity data link of the instant application on the PAIR website. Contrary to the Examiner's assertions, the amino acid sequence of SEQ ID NO:2 is clearly disclosed in the Sequence Listing on pages 52-53 in the '942 application as filed on June 17, 1997. *See*, Image File Wrapper, pages 53-54. Moreover, Applicants submit herewith a copy of pages 52-53 of the '942 application as filed, along with the return receipt postcard date stamped June 17, 1997. *See*, Exhibit A. Thus, the sequence of SEQ ID NO:2 is clearly and unambiguously disclosed in the '942 application. Accordingly, Applicants assert that the pending claims properly claim the benefit of the June 17, 1997 filing date of the '942 application and respectfully request an appropriate correction of the record.

II. Written Description Rejections Under 35 U.S.C. § 112, First Paragraph

The Examiner has rejected claims 29 and 41 under 35 U.S.C. § 112, first paragraph for alleged lack of written description. In particular, the Examiner has alleged that the recitation “wherein said antibody or fragment thereof is human” is not adequately described in the specification and is thus new matter. *See*, Official Action, pages 5-6, under “Claim Rejections – 35 USC § 112”.

Applicants respectfully disagree. However, in the interest of facilitating prosecution, and in no way in acquiescence to the Examiner’s rejection, Applicants have canceled claims 29 and 41 without prejudice or disclaimer, thereby obviating the Examiner’s rejection. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw this rejection.

III. Anticipation Rejections Under 35 U.S.C. § 102

The Examiner has rejected claims 22-36 and 38-44 under 35 U.S.C. § 102(e) as allegedly anticipated by Godowski et al. (U.S. Patent No. 6,121,415; “the ‘415 patent”). In particular, the Examiner alleges that because the ‘415 patent teaches antibodies that bind an amino acid sequence with high homology to the amino acid sequence of SEQ ID NO:2 of the instant invention, these antibodies would also bind the amino acid sequence of SEQ ID NO:2 and thus anticipate the antibodies of the claimed invention. *See*, Official Action, pages 6-7, under “Claim Rejections – 35 USC § 102”.

Applicants respectfully disagree and traverse this rejection.


Pursuant to M.P.E.P. § 706.02(V)(D) at 700-22, the effective filing date of an application that properly claims benefit under 35 U.S.C. § 119(e) to a provisional application is the filing date of the provisional application. Accordingly, the effective § 102(e) date for the ‘415 patent is July 9, 1997. As discussed above, the instant application properly claims priority to U.S. Provisional Application No. 60/049,942 and is thus entitled to the benefit of the earliest priority date of June 17, 1997. Thus, Applicants assert that the ‘415 patent is not a proper § 102(e) reference over the instant application. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw this rejection.

Conclusion

Applicants respectfully request that the above-made remarks and amendments be entered and made of record in the file history of the instant application. In view of the foregoing remarks, Applicants believe that this application is now in condition for allowance, and an early notice to that effect is urged. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicant would expedite the allowance of this application. If there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136, such an extension is requested and the fee should also be charged to our Deposit Account.

Dated: October 28, 2005

Respectfully submitted,

By 
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MJP/MJH/KC/ba

Exhibit A

HUMAN GENOME SCIENCES, INC.

Please date stamp and return to addressee on reverse side

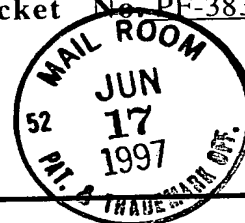
Applicant(s): Young et al.

Docket No. PF-383PP

Application No.: Unassigned

Filed: June 17, 1997

Title: Heregulin-like Factor



Documents Filed

1. Post card (2)
2. Transmittal letter
3. (56 pgs.) specification; (1 pg.) Abstract (Pg. 62)
21 Claims (pgs. 57 to 61)
4. Sequence Listing (pgs. 50 to 56)
5. Figures 1 - 4 (6 pages total)



TTTCTGGGTG AAGGAAGAAA GAGCAAAAAA GTGTGTGCTT GTGAGAGAGG AGGGATGGTA	772
GATAGGCAGA GGCAGGCTCA GAATGGAAGG ACCACGTATC TTGGAATATT ACTAAGTCAG	832
GACTTGAGTG AAAAAAGACT AAAGGTAAGC AAATTATAAA AGGATTTAGG AAACGCAGTC	892
CGGTATTGGA TATTGCTTAA AGAAAATTCC CTTATAAGTT TATACTTCCA AGACTCTGAA	952
TTGGATTACT GCAAACATCA TTAAGTGTTT CTAATTTAAT CCCATGAGAG TAATGGAATC	1012
CTTGCTCTGA GACATGCACT CTTACTTTTT CAGGATGATT TACCAGACTA GAACCTCCTG	1072
ATTTCCCCTT TTTTGTGTGT GTGAATGAAC CCCTGATAAA ATCTTGTGGC TGTAACATGC	1132
TCCTTAAAAT GCTGATATGA TAGATTTATT TTAAACAATA GGCTATAGAT TAGCTGTTAG	1192
GAAGCAAATA GATTATTACA ACAGGATTAA AGCAACTAAG AGTGCTAGAG ATAAAAGTCT	1252
CCCAAATAAT TGGAAAGATA AAAGAAATAT CTTAAAAAAC AGAGCTACAT CACACTGATA	1312
TTGTAAATTC AAAATGGGTA ATGAAGCTCA AAGCCTCCAA AGCTTGCAGC AAGTGCTGGT	1372
GAATTGCTTG GGAAGATGCA ACTAGTGTA TCTTTTACCT TTGGGTCAAT GTTCTGATTC	1432
TTTTGCAGCT TCTGCTCACA AGACTGAGCT TGCTTGATGG TATCGGGAAA GATATGAACA	1492
TTTTGCGTGT GCCTCCACAT GCAGCCACCA CAGTGTCCTG GGAAGATAGC TTTTATGAAC	1552
TTCATTTACA GAGGAGGAAA TGGAGGCTCA ACAAGTTTAG GAAATTATTA GGGTAGCAAA	1612
ACTAGTGGGT AGCAGAGTGG GATTCAAATC CCAGTCCCTG TGATACAATA AGCCACGCTC	1672
TGTAGGGTGC TACTGACTGG AGAAGCTCAT TGCTAAGACC GGCCATGTGC TCCACTGACG	1732
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GAAAGTTGTC AGAATCAAAA TGGAGTCATT TGTGTTAAAA ACCCTGACAA ATAGAGCCGG	1852
AGAAGGACAT GAAGGGAGCA GTCACGTAGG CAAATGCCTG ATTACAAGAA CTATCACAAA	1912
AGTCTGTGAA AACC GCAGCT TTGCATGAAG ACTATTGCAG CCTTACACGC ACGAAAATAG	1972
TTCTGCAAGG ACATATGCCC AGCAACTTCC TGTCACCCTT TGGACTGGCT CCTCCTTTCT	2032
TGGGATCCTT GCAGCCAAGG ATAGTGACCT CAAATCAGTT GTGTACCTAA CGTTTCCTGT	2092
CTTCCTAGTG ATAAAACATA GTTTCCTATA TCGTGTGTAT TCCCATTGCA ACACTTATTT	2152
CCAAATAAAT ATTTTCTTTT AGAGTCTCAA AAAAAAAAAA AAAAAAA	2199

(2) INFORMATION FOR SEQ ID NO:2:

(i) SEQUENCE CHARACTERISTICS:

(A) LENGTH: 157 amino acids

(B) TYPE: amino acid
(D) TOPOLOGY: linear

(ii) MOLECULE TYPE: protein

(xi) SEQUENCE DESCRIPTION: SEQ ID NO:2:

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Ser Ser Ser Ser Ser Ala Thr Thr Thr Thr Pro Glu Thr Ser Thr Ser
 1             5             10             15
Pro Lys Phe His Thr Thr Thr Tyr Ser Thr Glu Arg Ser Glu His Phe
      20             25             30
Lys Pro Cys Arg Asp Lys Asp Leu Ala Tyr Cys Leu Asn Asp Gly Glu
      35             40             45
Cys Phe Val Ile Glu Thr Leu Thr Gly Ser His Lys His Cys Arg Cys
      50             55             60
Lys Glu Gly Tyr Gln Gly Val Arg Cys Asp Gln Phe Leu Pro Lys Thr
      65             70             75             80
Asp Ser Ile Leu Ser Asp Pro Asn His Leu Gly Ile Glu Phe Met Glu
      85             90             95
Ser Glu Glu Val Tyr Gln Arg Gln Val Leu Ser Ile Ser Cys Ile Ile
      100             105             110
Phe Gly Ile Val Ile Val Gly Met Phe Cys Ala Ala Phe Tyr Phe Lys
      115             120             125
Ser Lys Arg Asn Ile Thr Ala Asn Ser Val Ser Glu Glu Arg Trp Lys
      130             135             140
Gly Leu Pro Ser Gln Glu Pro Asn Leu Gln Gln Asp Lys
      145             150             155
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(2) INFORMATION FOR SEQ ID NO:3:

(i) SEQUENCE CHARACTERISTICS:

(A) LENGTH: 148 amino acids
(B) TYPE: amino acid
(C) STRANDEDNESS: single
(D) TOPOLOGY: linear

(ii) MOLECULE TYPE: protein

(xi) SEQUENCE DESCRIPTION: SEQ ID NO:3:

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Ser Ser Glu Ser Pro Ile Arg Ile Ser Val Ser Thr Glu Gly Ala Asn
 1             5             10             15
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